

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

CMI ROADBUILDING, INC. and CMI
ROADBUILDING, LTD.,

Plaintiffs,

vs.

IOWA PARTS, INC.,

Defendant.

IOWA PARTS, INC.,

Counter Claimant,

vs.

CMI ROADBUILDING, INC. and CMI
ROADBUILDING, LTD.,

Counter Defendants.

No. 16-CV-33-LRR

ORDER

The matter before the court is United States Chief Magistrate Judge C.J. Williams's Report and Recommendation (docket no. 116). The Report and Recommendation recommends that the court grant Plaintiffs CMI Roadbuilding, Inc. and CMI Roadbuilding, Ltd.'s (collectively, "CMI") "Motion to Dismiss or Strike Defendant Iowa Part, Inc.'s Counterclaim" ("Motion") (docket no. 93).

On April 11, 2017, CMI filed a Second Amended Complaint (docket no. 81), asserting claims against Climate Engineers, Inc. and Defendant Iowa Parts, Inc. ("Iowa Parts") under the Defend Trade Secrets Act, 18 U.S.C. § 1832; the Iowa Uniform Trade Secrets Act, Iowa Code § 550.4; and Iowa common law for conversion and unjust enrichment. On April 25, 2017, Iowa Parts filed an Answer and Counterclaim (docket no. 84) asserting a counterclaim for abuse of process under Iowa law. On April 26, 2017, the

parties filed a Joint Stipulation of Dismissal With Prejudice (docket no. 85), dismissing Climate Engineers, Inc. from the instant action. On May 16, 2017, CMI filed the Motion, requesting that the court dismiss or strike Iowa Parts's abuse of process counterclaim. On May 30, 2017, Iowa Parts filed a Resistance (docket no. 111). On June 6, 2017, CMI filed a Reply (docket no. 113). On June 8, 2017, Judge Williams issued the Report and Recommendation. In the Report and Recommendation, Judge Williams advised the parties that any objections to the Report and Recommendation "must be filed within fourteen . . . days of the service of a copy of [the] Report and Recommendation." Report and Recommendation at 11. Neither party has filed objections to the Report and Recommendation, and the time for doing so has passed.¹

Pursuant to statute, this court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for de novo review of a magistrate judge's Report and Recommendation on dispositive motions when objections are made. Fed. R. Civ. P. 72(b)(3). The Eighth Circuit Court of Appeals has held that it is reversible error for a district court to fail to conduct a de novo review of a magistrate judge's Report and Recommendation when such review is required. *See, e.g., United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003). The court reviews the unobjected-to portions of the proposed findings or recommendations for "plain error."


¹ Since Judge Williams issued the Report and Recommendation, he also entered an order which, among other things, denied Iowa Parts's motion to amend its answer and assert additional counterclaims (docket no. 86). *See* June 13, 2017 Order (docket no. 119) at 19.

See United States v. Rodriguez, 484 F.3d 1006, 1010-11 (8th Cir. 2007) (noting that, where a party does not file objections to a magistrate's report and recommendation, the party waives the right to de novo review and the court will review the decision for plain error).

In this case, no objections have been filed, and it appears to the court upon review of Judge Williams's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Williams's Report and Recommendation of June 8, 2017. Accordingly, the Report and Recommendation (docket no. 116) is **ADOPTED** and the Motion (docket no. 93) is **GRANTED**. Iowa Parts's counterclaim for abuse of process (docket no. 84) is **DISMISSED**.

IT IS SO ORDERED.

DATED this 30th day of June, 2017.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

